

Office of the Attorney General
State of North Dakota

Opinion No. 82-63

Date Issued: August 20, 1982

Requested by: Dr. Joe Crawford
Superintendent
Department of Public Instruction

--QUESTIONS PRESENTED--

I.

Whether information, discussed at executive session of a special school board meeting for nonrenewal of a teacher held pursuant to Section 15-47-38(5) of the North Dakota Century Code, is confidential for the purposes of unemployment compensation eligibility determinations and appeals.

II.

Whether an action for slander or libel may be predicated upon information discussed at an executive session held pursuant to Section 15-47-38(5), N.D.C.C., and furnished by a school board to Job Service North Dakota for the purpose of unemployment compensation eligibility determinations and appeals.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that information, discussed at an executive session held pursuant to Section 15-47-38(5), N.D.C.C., is not confidential for the purposes of unemployment compensation eligibility determinations and appeals.

II.

It is my further opinion that an action for slander or libel may not be predicated upon information discussed at an executive session held pursuant to Section 15-57-38(5), N.D.C.C., and furnished by a school board to Job Service North Dakota for the purpose of unemployment compensation eligibility determinations and appeals.

--ANALYSIS--

I.

Section 15-47-38, N.D.C.C., is concerned with the procedure for nonrenewal of a teacher's contract. It provides for an executive session of a special school board meeting for the purpose of discussing and acting upon the nonrenewal. The term, 'executive session,' implies that information discussed at such a meeting is confidential.

Section 52-01-02, N.D.C.C., provides, in part, 'The bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the bureau, or he, deems necessary for the effective administration of the North Dakota Unemployment Compensation Law.' To implement that statute Job Service has promulgated Section 27-03-02-01 of the North Dakota Administrative Code, which provides as follows:

27-03-02-01. SEPARATION INFORMATION REQUIRED FROM EMPLOYERS INVOLVING POSSIBLE DISQUALIFICATION OR INELIGIBILITY.

1. SEPARATION INFORMATION FROM EMPLOYER. When a claimant has been determined to have insured status, the division shall promptly notify the worker's last employer on form nduc 211(a), or its equivalent, . . . setting forth in detail the reasons for the employer's protest.

2. FAILURE OF EMPLOYER TO FILE SEPARATION OR ELIGIBILITY INFORMATION. If reply on form nduc 211(a), or an equivalent, is not mailed or delivered to the division within seven days after the date appearing on the notice, the determination of the division shall be final.

It appears that there is a conflict between Section 15-47-38(5), N.D.C.C., and Section 52-01-02, N.D.C.C. The executive session of Section 15-57-38(5), N.D.C.C., makes confidential much of the same information required by Section 52-01-02, N.D.C.C., to be divulged to Job Service.

It is a fundamental rule of construction that the intent of the legislature should be determined and given effect. *State v. Moore*, 286 N.W.2d 274 (N.D. 1979); *Hughes v. State Farm Mut. Auto, Ins. Co.*, 236 N.W.2d 870 (N.D. 1975); *State v. Weigel*, 165 N.W.2d 695 (N.D. 1969). In this case the intent of the legislature is expressed by Section 15-47-38(1), N.D.C.C., which states, in part, 'In the very sensitive area of discharge of teachers for cause prior to the expiration of the term of the teacher's contracts, or in decisions not to renew the contracts of teachers, school boards shall give serious consideration to the damage that can result to the professional stature and reputation of such teachers.' It is reasonable to assume that the legislature intended the executive session to protect the reputation of nonrenewed teachers.

The reputation of nonrenewed teachers would not be damaged by the disclosure to Job Service of information discussed at the executive session, since such information is made confidential by Section 52-01-02, N.D.C.C., and Section 52-01-03, N.D.C.C. For

that reason, the intent of Section 15-57-38(5), N.D.C.C., would not be violated by disclosure to Job Service of information made known at the executive session.

Furthermore, when two statutes are in conflict they should be construed whenever possible to give effect to both statutes, if this can be done without doing violence to either. *Kosmatka v. Safety Responsibility Division of North Dakota State Highway Dept.*, 196 N.W.2d 402 (N.D. 1972); *Stradinger v. Hatzenbuehler*, 137 N.W.2d 212 (N.D. 1965); *State v. Erickson*, 7 N.W.2d 865 (N.D. 1943). As indicated above the intent of Section 15-47-38(5), N.D.C.C., would not be violated by disclosure to Job Service of information revealed at the executive session.

Therefore, Section 15-47-38(5), N.D.C.C., should be construed as allowing disclosure to Job Service. Such a construction would give full effect to both statutes and fulfill the intent of the legislature.

II.

Section 52-06-37, N.D.C.C., states, 'No action for slander or libel, either civil or criminal, shall be predicated upon information furnished by an employer to the unemployment compensation division in connection with the imposition of any of the disqualifications set forth in Section 52-06-02.' Section 52-06-02, N.D.C.C., includes disqualification for discharge from employment for misconduct, which might apply in the case of a teacher whose contract was not renewed.

Thus, a school board could not be held liable for slander or liable based on information furnished to Job Service for the purpose of eligibility determinations or appeals. They could not be held liable regardless of whether or not such information was discussed at an executive session held pursuant to Section 15-57-38(5), N.D.C.C.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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